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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)
)
READING BROADCASTING, INC.)
)
For Renewal of License of Station)
WTVE(TV), Channel 51,)
Reading, Pennsylvania)
)
and)
)
ADAMS COMMUNICATIONS)
CORPORATION)
)
For Construction Permit for a)
New Television Station On)
Channel 51, Reading,)
Pennsylvania)

MM Docket No. 99-155

File No. BRCT-940407

File No. BPCT-940630KG

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY TO BRIEF IN SUPPORT
OF INITIAL DECISION AND
CONTINGENT EXCEPTIONS

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of Station)	
WTVE(TV), Channel 51,)	
Reading, Pennsylvania)	
)	
and)	
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ADAMS COMMUNICATIONS)	
CORPORATION)	File No. BPCT-940630KG
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For Construction Permit for a)	
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Channel 51, Reading,)	
Pennsylvania)	

To: The Commission

**REPLY TO BRIEF IN SUPPORT
OF INITIAL DECISION AND
CONTINGENT EXCEPTIONS**

A. Introduction/Summary

Adams Communications Corporation ("Adams") has submitted a "Brief In Support Of Initial Decision And Contingent Exceptions Of Adams Communications Corporation" ("Adams Exceptions") that violates the page limitation in Section 1.277(c) and presents no valid substantive arguments. Contrary to Adams' claims, the record in this case shows that Reading Broadcasting, Inc. ("RBI") warrants a renewal expectancy and that, even without a renewal

expectancy, RBI must be considered the superior comparative applicant due to its preferences for local ownership, civic involvement, broadcast experience and comparative coverage. Similarly, Adams fails to show that RBI should be disqualified in light of RBI's removal of Micheal Parker as attributable principal, pending a final decision as to his qualifications to be a licensee. RBI's remaining principals satisfy all of the elements of the FCC's policy on character qualifications.

B. Adams Argues For An Ad Hoc, Contorted Comparative Standard

As shown in RBI's exceptions, the Initial Decision of Administrative Law Judge Richard L. Sippel ("I.D.") erred in its comparative analysis, adopting ad hoc standards that minimized RBI's comparative preferences. Adams seeks to uphold and compound those errors.

1. Local Residence, Civic Activities and Broadcast Experience

Adams argues that no comparative credit can be given for RBI's local residence, civic activities and past broadcast experience because the Bechtel II case invalidated the Commission's integration criterion.¹ Alternatively, Adams argues that the ALJ correctly held that those factors would be relevant only to the extent that they could be demonstrated to have had an impact on WTVE's programming during the license renewal period.² Both arguments are plainly meritless.

The Commission's First Report and Order in the broadcast auction proceeding stated that remaining comparative renewal cases were to be decided "as nearly as possible according to the standards in effect prior to Bechtel II."³ While the Bechtel II court invalidated the integration

¹ See Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993) ("Bechtel II").

² Adams Exceptions at 6 (citing Memorandum Opinion and Order, FCC 99M-47 (8-9-99)).

³ Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Fixed Service Licenses, 13 FCC Rcd 15920, 16006 (1998).

criterion, continued credit for local residence, civic involvement and broadcast experience is in no way inconsistent with Bechtel II. The Bechtel II court did not find the "enhancement factors" to be arbitrary and capricious – in fact, part of the court's reasoning in striking down the integration preference was that "the 'quantitative' portion of the integration credit tend[ed] to swamp the qualitative." 10 F.3d at 882. The court recognized the value of local ownership (and implicitly, local civic involvement) in its criticism of the integration credit on the grounds that "[f]amiliarity with a community seems much more likely than station visits or correspondence to make one aware of community needs," and that "even long-time local residence generates at most a 'qualitative' enhancement of an applicant's integration credit." Id. At 885. Accordingly, local residence, civic activities and broadcast experience remain valid comparative factors after Bechtel II.⁴ If anything, Bechtel II indicates that these factors must be given greater weight than they have been given in the past.

The ALJ's Memorandum Opinion and Order, FCC 99M-47 (8-9-99), did not, as Adams claims, hold that RBI's enhancement factors would be relevant only to the extent that they were shown to have had an impact on WTVE's programming during the license term. However, the I.D. (§ 219), citing no legal authority whatsoever, erroneously downgraded RBI's preferences for local residence and civic involvement based on RBI's programming record during the license term. The Court of Appeals has rejected a similar analysis previously.⁵ Likewise, the I.D. erroneously cut back RBI's credits for local ownership and civic involvement by crediting only

⁴ As noted by the ALJ, these factors differ from the integration credit because they are not predictive in nature, but instead are verifiable, objective criteria. See Memorandum Opinion and Order, FCC 99M-47 (8-9-99). The integration credit, on the other hand, was awarded based on unverifiable future promises to participate in the management of a station on a full-time or part-time basis.

⁵ See Committee for Community Access v. FCC, 737 F.2d 74 (D.C. Cir. 1984).

those shareholders who were local residents and civically active during the renewal term, when in fact RBI should receive credit for all local residence and civic activities prior to the "B" cut-off date of April 30, 1999.⁶ Similarly, RBI itself was shown to be civically active (I.D., ¶¶ 89-109) and should be credited for those activities.

2. Diversification of Media Outlets

Adams proposes that RBI's ownership of WTVE count against RBI in the diversification analysis. Adams Exceptions at 4. However, whichever party wins this hearing will hold the license for that station, so it is not a valid comparative factor. RBI's other media interests are those of Micheal Parker, a stockholder of RBI. One of Parker's media interests is international broadcast station KAIJ, Dallas, Texas. However, as an international broadcast station, by definition KAIJ has no domestic audience and cannot be considered as a comparative factor.⁷ Parker also held a now-terminated time brokerage agreement for WHCT-TV, Hartford, Connecticut. However, neither the ALJ nor Adams cites any authority that such an interest, in a distant media market, carries any comparative significance. Parker's final media interest is KVMD(TV), Channel 31, Twentynine Palms, California. Such a distant media interest, held by a stockholder with less than a 50% interest in RBI, is de minimis.⁸

As RBI has stated previously, it would be arbitrary and capricious to attach decisional significance to the distant media interests attributed to RBI. In recent years, the Commission has relaxed or eliminated virtually all of its restrictions on holding media interests in separate

⁶ See Report No. 24457A (3-26-99).

⁷ See 47 C.F.R. § 73.701(a) and § 73.788.

⁸ Adams cites two cases on the diversification issue. The first, Isis Broadcasting Group, is not at the cite provided by Adams. The second case, Cowles Broadcasting, Inc., 86 FCC 2d 993 (1981), involved substantial media interests, including attributable interests in several in-state newspapers. RBI's situation is not at all comparable.

markets.⁹ This has occurred due to the proliferation of media outlets and multichannel distribution systems over the past 30 years. Parker's interest in distant media outlets has no significance whatsoever to the viewers of WTVE in Reading.

3. Comparative Coverage

Adams argues that it merits a coverage preference for its proposal to serve 4,260,920 persons. Adams claims that RBI merits credit only for its existing coverage of 3,119,889 persons, and not for its construction permit to serve 7,362,938 persons.

Adams appears to ignore RBI's April 30, 2001 "Section 1.65 Statement." There, RBI submitted a copy of the decision attached to Adams' Exceptions, as well as a copy of RBI's brief on appeal to the Pennsylvania Supreme Court. However, RBI noted that any action by that court would likely come too late for this proceeding, and therefore RBI had filed an application to modify its outstanding construction permit to specify operation with greater power and greater height at WTVE's currently licensed site. In doing so, RBI stated that it was willing to accept to downgrade from 7,362,938 persons to be served to 5,508,305 persons to be served. That downgraded coverage proposal will offer service to approximately 30% more people than Adams' proposal.

Commission policy favors maximizing the service offered on a broadcast channel. That is what RBI has been trying to do with its construction permit site, which would have more than doubled the population served by WTVE. That site met all FCC and FAA criteria, and RBI has diligently sought to overcome the zoning issue. RBI cannot now be penalized for having fought

⁹ Implementation of Sections 202(a)(1) and 202(e) of the Telecommunications Act of 1996, 11 FCC Rcd 12374 (1996); Review of the Commission's Regulations governing Television Broadcasting, 14 FCC Rcd 12903 (1999); Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996, 11 FCC Rcd 12368 (1996).

that battle. Rather, RBI's application should be granted and RBI should be credited with a coverage advantage for its proposal to serve 5,508,305 persons.

RBI, with comparative preferences for local ownership, civic activities, broadcast experience and proposed coverage, is clearly the preferred applicant over Adams. Adams' attempts to apply an ad hoc, contorted comparative standard must be rejected.

C. Renewal Expectancy

On the renewal expectancy issue, Adams applies definitional sleight-of-hand for purposes of minimizing WTVE's record of public service. Adams also improperly attempts to use post-license term conduct in assessing RBI's claim to a renewal expectancy, conveniently overlooking the fact that RBI was not allowed to introduce positive post-license term evidence to support its case. Adams also misrepresents RBI's conduct in its attempt to discredit RBI.

1. WTVE's Programming

In its Exceptions, Adams cites and relies upon Cowles Broadcasting, Inc., 86 FCC 2d 993 (1981). Adams relies on that case in connection with the diversification issue, but in reality the case is best known as the seminal case on renewal expectancy. Interestingly, Adams ignores the renewal expectancy portion of Cowles, which bears directly on this case and undermines both Adams' analysis and the ALJ's analysis of the renewal expectancy issue.

In Cowles, the Commission found that an NBC-affiliated station in Daytona Beach, Florida had a "substantial" record of service, based primarily on the station's short-form programming. 86 FCC 2d at 1006-07. The Commission made no reference to the station's ascertainment efforts. The only 30-minute programs cited by the Commission were a 30-minute interview program aired 141 times in the license term and 84 local specials. The remaining programming cited with approval included "On Camera 2" (a 3-5 minute segment of the 5:30

news featuring a newsworthy person, aired 47 times in the license term), "Focus 2" (a 15-minute interview program aired 444 times in the license term), "Opinion" (a 3-5 minute segment of the weekend newscasts aired 455 times in the license term), "2-day, 2-night and 2-morrow" (a 5-minute segment of the afternoon news aired 148 times in the license term), "Minute Memos" (a 60-second segment for community leaders aired 984 times in the license term), "TV Classroom" (segments produced by Daytona Beach Community College, aired 258 times in the license term), and "Opportunity Line" (segments produced with the National Alliance of Businessmen, aired 17 times in the license term). The Commission awarded a dispositive renewal expectancy even though the station violated the Commission's main studio rule (now Section 73.1125) during the license term. *Id.* at 1004-06 and 1017. The Commission also declined to consider the licensee's violations of Section 1.65 in reporting changes in media interests. *Id.* at 1019-22.

In contrast to Cowles, which specifically credited short-form public affairs programming aired without prior notice to the audience, both Adams and the ALJ have argued that RBI deserves no such credit for its short-form public affairs programming. Adams does so by relying on its analysis of WTVE's programming, which specifically excluded all programming logged as a "PSA," regardless of the length. Adams Ex. 2, App. A; Tr. 1217-18.¹⁰ Thus, for example, Adams' "Daily Analysis" for October 1, 1993 (Adams Ex. 7, p. 2) gave WTVE credit for 0 minutes of non-entertainment programs, even though the attached log (*id.* at pp. 5-12) showed that WTVE aired a 3-minute "Health Report," a 3-minute "Take 3," a 3-minute "Informative Moment" (aired twice), a 2-minute "News To You," a 3-minute "Community Outreach" (aired

¹⁰ RBI has previously noted that "PSA" was merely a convenient logging designation, and was not intended to supersede RBI's designation of programming in its quarterly issues and programs lists. RBI's quarterly issues and programs lists generally described programming of 2 minutes or more as a "program" or "segment" and 30-second or 60-second public service announcements as "PSAs."

twice), a 90-second "Community Calendar" (aired 4 times), a 3-minute "Kids Korner" (aired twice), a 3-minute "Elderly Report," another 3-minute "Take 3," another 2-minute "News To You," another 3-minute "Community Outreach," another 2 ½-minute "Kids Korner," another 3-minute "Health Report," another 3-minute "Take 3," another 2-minute "News To You," a 30-second weather report aired 4 times, 6 PSAs of 60 seconds apiece and 52 PSAs of 30 seconds apiece.¹¹ WTVE's public affairs programming for that day included 47 ½ minutes of segments of 2 minutes or more and 34 minutes of segments of 90 seconds or less. Adams Ex. 7 at 5-12. Thus, Adams' "O" minutes of public service programming for that day actually exceeds 80 minutes. The Commission must not allow itself to be taken in by Adams' purposefully distorted analysis.

The Commission places the greatest weight on the portion of the license term deemed most predictive of future performance. See Harriscope of Chicago, Inc., 5 FCC Rcd 6383 (1990). In this case, the period after WTVE emerged from bankruptcy in 1992 is the most significant.¹² In 1993, RBI aired 7.5% public service programming -- an average of 72.5 program minutes and 35.5 PSA minutes a day. In 1994, RBI aired 11.2% public service programming -- an average of 116.5 program minutes and 44.5 PSA minutes a day. RBI Ex. 8 at

¹¹ WTVE's PSAs included many that were produced by WTVE in cooperation with local organizations, such as the "Have You Seen Me?" missing children PSAs (see RBI Ex. 8 at 4; RBI Ex. 28), the Reading Humane Society, the Reading Museum, the Keyston Safety Belt Network, Berks County Literacy Coalition, Crime Stoppers PSAs, etc.

¹² RBI showed that WTVE lost money throughout the license term, even after emerging from bankruptcy. See Hubbard Broadcasting, Inc., 41 RR 2d 979, 988 (1977) (limited public service programming is acceptable in case of money-losing UHF station competing against VHF stations). Adams' and the ALJ's attempt to second-guess the wisdom of RBI's contractual obligations is meritless. (Adams, for example, attempts to show payments made to Partel, Inc., but makes no distinction between reimbursement of expenses incurred by Partel, Inc. and other payments to Partel, Inc.) Clearly, RBI was not attempting to lose money.

9-10 and App. B at 4-9). This record is comparable to the "substantial" record of the licensee in Cowles.¹³

2. RBI's Compliance Record

Adams distorts RBI's compliance record and, like the ALJ, erroneously applies post-license term conduct to RBI's detriment. Such evidence should be considered only in conjunction with a designated issue, which has never been requested in this case. (Alternatively, the record should be re-opened so that RBI could introduce positive post-license term evidence.)

RBI conceded reporting failures in listing its officers and directors in filings with the Commission. RBI Ex. 14. RBI disputes the ALJ's finding that RBI underwent an unauthorized transfer on control,¹⁴ but even if such a transfer did occur, it was cured within a matter of months by the Commission's approval of RBI's long-form transfer of control application. None of RBI's

¹³ Adams' attacks on WTVE's record -- for example, for taping a single daily weather report and airing the report several times that morning -- only serve to underscore the wisdom of the Commission's renewal expectancy policy, which guards against replacing a known licensee that has a substantial record with an unknown challenger. The Commission has no way of knowing whether Adams would air any news, public service or weather information. In fact, on the prior occasion when the principals of Adams were found to be comparatively superior to the incumbent, they elected not to proceed with their stated programming plans, choosing instead to accept a substantial settlement. Adams has admitted to having no business plan for its proposed station in Reading. Tr. 1109. Adams' testimony with regard to potential station operations is, at best, fuzzy. Tr. 1065-68, 1107-33. Under these circumstances, how confident can the Commission be that Adams, if awarded the permit in Reading, would actually construct and operate the station in a manner superior to RBI, rather than selling out to a third party? Interestingly, Adams always refers to the Reading channel as "valuable" rather than "profitable," revealing the mentality of a short-term trader. The evidence of record strongly indicates that Adams has no serious intention of operating its proposed station in Reading.

¹⁴ See RBI's "Opposition to Motion to Enlarge Issues (Unauthorized Transfer of Control and Misrepresentation/Lack of Candor)" filed November 19, 1999 and "Reading Broadcasting, Inc.'s Consolidated Response To the Proposed Findings of Fact and Conclusions of Law of Adams Communications Corporation And The Enforcement Bureau" filed October 23, 2000.

violations had any impact on the station's viewers. RBI's violations are no more serious than in those cases where a station was awarded a renewal expectancy notwithstanding rule violations.¹⁵

In the category of post-license term conduct, Adams falsely claims that RBI has failed to advise the Commission the status of its tower litigation. In reality, RBI advised the ALJ and the parties on October 23, 2000 that its appeal remained pending and that if the appeal were denied, RBI would seek approval for a different technical facility.¹⁶ Within 30 days of the denial of the appeal, RBI advised the Commission of that fact and filed its application to modify WTVE's construction permit.¹⁷

Adams similarly claims that RBI failed to report the initial appointments of Warren Chinn and Leonard Stevens as directors. (Those appointments were made on October 25, 2000.) There was no obligation to do so. The Commission had suspended its ownership reports for broadcast licensees until this year, when biennial reports went into effect. Even when ownership reports were required to be filed each year, the appointment of new directors was not required to be reported until the next ownership report was filed. Upon filing its biennial report noting changes in its directors, out of an abundance of caution RBI then submitted a Section 1.65 statement reporting the changes in directors, even though it is not a matter of decisional

¹⁵ See Valley Broadcasting Co., 4 FCC Rcd 2611 (Rev. Bd. 1989), rev. denied, 5 FCC Rcd 499 (1990), aff'd sub nom. William H. Hernstadt v. FCC, 919 F.2d 182 (D.C. Cir. 1990); Cowles, supra. In contrast to this case, in Cowles the main studio violation involved a "bedrock" obligation of broadcast licensees. See Main Studio and Public Inspection Files, 13 FCC Rcd 15961 (1988), on recon., 14 FCC Rcd 11113 (1999).

¹⁶ See "Reading Broadcasting, Inc.'s Consolidated Response To The Proposed Findings of Fact and Conclusions of Law of Adams Communications Corporation And The Enforcement Bureau" at 2 n.1.

¹⁷ See "Section 1.65 Statement" filed on April 30, 2001.

significance. If anything, RBI has over-reported rather than under-reported.¹⁸ Adams' shoot-from-the-hip claim of prevarication is completely baseless.

A third post-license term matter is the filing of an "Option and Stock Purchase Agreement" dated November 1, 1999 with RBI's April, 2000 ownership report. The delay in filing this report was due to a miscommunication between RBI and its counsel. However, that brief delay had no impact on RBI or this proceeding. Moreover, the existence of the Option and Stock Purchase Agreement was disclosed in the Time Brokerage Agreement with Philadelphia Television Network, Inc., filed by RBI on December 17, 1999 and served on the parties and the ALJ.

Finally, Adams refers to an interlocutory order by the ALJ calling for RBI to pay certain third-party witness costs. For the reasons stated in RBI's June 8, 2000 "Opposition To Motion For Legal Fees and Costs," RBI requests the Commission to vacate the ALJ's Protective Order, FCC 00M-48 (7-18-00). To RBI's knowledge, the Protective Order is unprecedented in ordering an applicant to pay certain legal expenses of a third-party witness.¹⁹

D. The ALJ Properly Held RBI To Be Qualified

For the reasons stated in RBI's Exceptions, the I.D., in finding Micheal Parker to be unqualified, contained egregious errors requiring the reversal of the I.D. However, if Parker

¹⁸ For instance, RBI filed an annual ownership report for 2000 even though it was not required and has provided information on its ownership reports that exceeds what the form requires.

¹⁹ If the Protective Order is affirmed by a final order in this case, RBI will pay the amount specified therein, notwithstanding the questionable legality and enforceability of that order.

were unqualified, the I.D. correctly held that RBI would be deemed qualified if Parker were removed from "all vestiges of control of RBI." I.D., ¶ 234.

Subsequent to the I.D., RBI reached agreement with Parker on his withdrawal as an officer and director of RBI, the termination of the Partel, Inc. Management Services Agreement and the termination of Parker's voting rights, pending a final determination of Parker's qualifications. See RBI's Section 1.65 Statement filed on May 21, 2001.²⁰ Parker simultaneously sought to intervene as a party in the case.²¹

Adams erroneously argues that Parker remains on board with RBI. However, Adams is referring to a Section 1.65 statement that reported Parker's re-election as an officer and director effective as of March 21, 2000, which was before, rather than after, the I.D. in this case. As

²⁰ The Enforcement Bureau, commenting on the provisions of the Voting Trust Agreement, noted that the agreement provides that Parker would regain his voting rights if he were found to be qualified by a final order or if WTVE were sold to a third party. The Enforcement Bureau has also noted that Parker retains an economic interest in RBI. If the Commission finds these aspects troubling, it can grant RBI's license renewal with appropriate conditions. The first provision was acceptable to RBI because it would apply only if there were a final order finding Parker to be qualified, in which case he would be in the same position as all other RBI stockholders. The second provision was acceptable to RBI because it would apply if RBI held no FCC licenses and therefore were not subject to the FCC's jurisdiction. However, the Commission can apply any appropriate conditions to a grant of RBI's license renewal application to restrict Parker's role in the company. See Faulkner Radio, Inc., 88 FCC 2d 612, 618 (1981).

²¹ From RBI's perspective, it is appropriate to treat Parker as a separate party to the case now that Parker has become a non-attributable stockholder in RBI. RBI believes that Parker should have an avenue for litigating his qualifications in the event RBI receives a grant of its license renewal application but the decision on Parker's qualifications is not reversed. Adams' and the Enforcement Bureau's evident concern that Parker's participation constitutes an end-run around the FCC's page limitation on exceptions is unfounded. RBI's motivation was simply to remove Parker as an attributable principal, pending a final decision on his qualifications. The recommendation that he seek independent counsel to litigate his qualifications was a logical by-product of Parker's removal. The decision to seek intervention and to file contingent exceptions on Parker's behalf was solely that of Parker's counsel. In any event, the appropriate remedy for enforcing the page limitations, which Adams itself ignored, is not to deny Parker status as a party.

noted above, shortly after the I.D. Parker and RBI reached agreement on Parker's becoming a non-attributable stockholder, which was promptly reported to the Commission.

Adams attempts to inject regulatory issues into the business relationship and business disputes between Parker and RBI.²² (Adams also tries to have it both ways -- Parker accomplished a "coup" of RBI, but at the same time RBI's other stockholders acquiesced in Parker's actions.) Adams Exceptions at 15-16. There have been disputes between Parker and other stockholders of RBI, culminating in Parker's removal as President of RBI briefly in 1991 and 1997.²³ Those disputes eventually were resolved on terms acceptable to both sides. Although Adams suggests that RBI could have removed Parker from the company prior to the I.D., this argument ignores the fact that Parker had enforceable rights under the Management Services Agreement as well as significant rights under state law as a minority shareholder.²⁴ With the issuance of the I.D., both Parker and RBI have taken good-faith steps to comply with the I.D.'s requirement that Parker be removed from all vestiges of control in order for RBI to be

²² Adams attempts to use selected snippets of corporate minutes reflecting inflammatory comments made during boardroom disputes that have long since been resolved. Long-established Commission policy precludes consideration of unadjudicated instances of name-calling. See Policy Regarding Character Qualifications In Broadcast Licensing, 102 FCC 2d 1179 (1986), modified, 1 FCC Rcd 421 (1986), 5 FCC Rcd 3252 (1990), 6 FCC Rcd 3448 (1991), 7 FCC Rcd 6564 (1992) ("Character Qualifications").

²³ Tr. 740, 766-69. Adams' characterization of Parker as RBI's dominant or controlling stockholder, notwithstanding his now-relinquished ability to vote less than 50% of RBI's stock, is inconsistent with Commission precedent. See, e.g., By Direction Letter To William S. Paley, 1 FCC Rcd 1025, 1026 (1986), and cases cited therein. The claim by Adams and the ALJ that Parker's Management Services Agreement provided Parker with complete control over RBI and WTVE's operations is simply inconsistent with the record evidence, including the agreement itself. Ultimate control of RBI and WTVE has remained with RBI's stockholders and directors. Parker's removal as an attributable stockholder eliminates Parker's power as an issue altogether.

²⁴ See, e.g., 15 Pa.C.S.A. § 1726(a)(3) (restriction on removal of a director in a corporation with cumulative voting rights, which is the case with RBI -- effectively preventing the removal of a director with a substantial minority voting interest).

found qualified. This is completely consistent with the Commission's regulatory agenda, which is not retribution but reliability of its licensees. Any sanction deemed appropriate for Parker's activities is properly directed at Parker rather than RBI.

Adams' arguments about the other principals of RBI consist essentially of "guilt by association," not a meaningful assessment of the record. Both RBI and all of its attributable principals, with the removal of Parker, satisfy the FCC's Character Qualifications criteria.²⁵ All of RBI's remaining directors are independent persons with a fiduciary obligation to advance RBI's best interests. Adams has provided no basis for concluding that any of RBI's directors will act otherwise.

Adams fails in its efforts to distinguish other cases in which an applicant was found qualified to be a licensee after the removal of principal found to have engaged in wrongdoing. In PCS 2000, the resignations of executives involved in misrepresentation to the Commission, destruction of documents and creation of false documents occurred after an investigation by the Commission had uncovered the nature and extent of the wrongdoing. See PCS 2000, L.P., 12 FCC Rcd 1703, 1707-14 (1997). In Faulkner Radio, Inc., 88 FCC 2d 612 (1981), the resignation and stock sale by the officer/director/stockholder involved in a "strike" petition at the

²⁵ Jack Linton is a long-time attorney in Reading with an impressive record of civic involvement. Irvin Cohen is a successful businessman with a significant record of civic involvement. Frank McCracken is a minister, former city councilman in Reading and civically active. RBI Ex. 2 at 5-7, Tr. 661, 665-66. George Mattmiller has extensive broadcast experience with a unblemished record. Tr. 536-46.

Tom Root's role as an employee of WTVE has been disclosed. See RBI's "Opposition To Adams' Threshold Showing Of Unusually Poor Broadcast Record" filed September 13, 1999. Mr. Root is not and never has been in a decision-making position at WTVE, nor does he sign FCC-related filings or logs or direct anyone else to do so.

Mr. McCracken was criticized in the I.D. with respect to RBI's late filing of its Telemundo affiliation agreement. I.D., ¶¶ 114-17. However, there was no testimony on that matter, and the documents cited by the ALJ do not on their face support the inference of a knowing violation of Section 73.3513.

Commission occurred after decisions on the merits of the issue by the Commission and the Court of Appeals. In Teleprompter Cable Systems, Inc., 40 FCC 2d 1027 (1973), the change in corporate management occurred after the corporation and its former president were convicted of federal felonies in connection with unlawful payments to local officials for purposes of obtaining a cable television franchise. RBI's actions (obtaining the resignation of Parker as an officer and director, the termination of the Management Services Agreement, the placement of his stock in a voting trust controlled by an independent party and the assignment of the Aurandt proxy to another independent party) are in accord with these precedents and the Commission's Character Qualifications policy.²⁶

Adams finds it significant that Parker appeared at the hearing as RBI's primary witness. It is significant, but not for the reason suggested by Adams. The significance is that, out of all of RBI's officers, directors and shareholders, only Parker had personal knowledge of the representations in question in the misrepresentation issue designated against RBI. Although one of the applications in question was an RBI application, the disputed representations in that application were merely duplications of representations made in prior applications to which Parker, and not RBI, was a party. Likewise, the application and ownership reports containing errors were signed by Parker and he took responsibility for those errors. Tr. 811-15. On other matters, such as RBI's programming record and ascertainment efforts, RBI presented testimony from employees with personal knowledge. The ALJ limited the disqualification to Parker, and

²⁶ Adams' characterization of Parker as a "controlling stockholder" pursuant to the Character Qualifications policy is erroneous. Parker held less than a controlling interest in RBI. Although the ALJ imputed control over WTVE's activities to Parker due to the Management Services Agreement -- a conclusion that RBI believes is erroneous -- the termination of that agreement renders the issue moot.

RBI has appropriately removed Parker as an attributable principal of RBI pending a final determination of Parker's qualifications.

In attacking Parker's character, Adams relies in part on the ALJ's conclusions that Parker lacked candor in his written testimony and his oral testimony. See I.D., ¶¶ 138-41, 224-25, 231. However, it is difficult to understand how Parker could be deemed to be attempting to mislead the Commission on this issue. All of the relevant decisions and applications were a matter of public record, attached to Parker's written testimony.

As noted by RBI previously, the ALJ's conclusions in ¶¶ 138-41 mischaracterize the relevant testimony. Similarly, ¶¶ 224-25 of the I.D. attack Parker for failing to answer "Yes" to Question 4 in the application forms and then for failing to acknowledge in his written testimony and his oral testimony that he should have answered "Yes" to Question 4. RBI has shown that Question 4 relates to non-broadcast misconduct, and that Parker answered Question 4 correctly. Likewise, ¶ 231 attacks Parker for not agreeing with a question that mischaracterized Parker's prior answer. See Tr. 2652. The evidence simply does not support the ALJ's conclusion as to Parker's credibility. Essentially, the I.D. is taking Parker to task on credibility grounds for not adopting the mistaken legal analysis contained in the I.D.

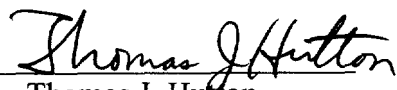
E. Conclusion

RBI is entitled to a renewal expectancy based on its programming record from 1989-94. Even without a renewal expectancy, RBI is the preferred applicant over Adams due to its comparative advantages for local residence, civic activities, broadcast experience and comparative coverage.

For the reasons stated in RBI's exceptions, the I.D. erred in disqualifying Parker. However, if Parker's disqualification were upheld, RBI is nevertheless qualified to remain a Commission licensee.

Respectfully submitted,

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May 31, 2001

CERTIFICATE OF SERVICE

I, Myra Powe, a secretary in the law firm of Holland & Knight, LLP, do hereby certify that on May 31, 2001, a copy of the foregoing REPLY TO BRIEF IN SUPPORT OF INITIAL DECISION AND CONTINGENT EXCEPTIONS was delivered by hand to the following:

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